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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Recommendations made by the Special Representative of the Secretary-General for human rights in Cambodia on matters within his mandate

Report of the Secretary-General

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I. INTRODUCTION

1. The General Assembly, in its resolution 48/154 of 20 December 1993, entitled "Situation of human rights in Cambodia", welcomed the establishment in Cambodia of an operational presence of the Centre for Human Rights of the Secretariat and requested the Secretary-General to assure the protection of human rights of all people in Cambodia. On 1 October 1993, the Centre established its office in Cambodia in Phnom Penh. On 23 November 1993, a Special Representative for human rights in Cambodia, Mr. Michael Kirby (Australia), was appointed to undertake the tasks set out in Commission on Human Rights resolution 1993/6 of 19 February 1993. These tasks include:

(a) To maintain contact with the Government and people of Cambodia;

(b) To guide and coordinate the United Nations human rights presence in Cambodia;

(c) To assist the Government in the promotion and protection of human rights.

2. Pursuant to the request of the General Assembly in resolution 48/154, the Special Representative has reported successively to the General Assembly at its forty-ninth session (A/49/635 and Add.1) and to the Commission on Human Rights at its fiftieth 1/ and fifty-first 2/ sessions.

3. The report of the Secretary-General to the General Assembly on the role of the Centre for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights, submitted pursuant to General Assembly resolution 49/199, is contained in document A/50/681/Add.1.

4. The General Assembly, in its resolution 49/199 of 23 December 1994, entitled "Situation of human rights in Cambodia", requested the Secretary-General to report to the General Assembly at its fiftieth session on the recommendations made by the Special Representative on matters within his mandate. The Assembly also requested the Special Representative, in collaboration with the office in Cambodia of the Centre for Human Rights, to undertake an evaluation of the extent to which the recommendations made by the Special Representative in his report to the Assembly and those contained in his first report to the Commission on Human Rights 3/ had been followed up and implemented. The present report is submitted in accordance with those requests.

5. The Special Representative, in accordance with the previous practice, took the occasion of his sixth mission to Cambodia (5-16 August 1995) to visit, in addition to the capital Phnom Penh, the following provincial areas of Cambodia: (a) the Province of Kampot; (b) the Province of Kampong Cham; and (c) the Municipality of Kep.

6. As requested by the General Assembly in paragraph 20 of its resolution 199/49 and by the Commission on Human Rights in paragraph 22 of its resolution 1995/55 of 3 March 1995, he also paid particular attention to vulnerable groups,

including children, squatters and other homeless people. The programme of the sixth mission is contained in annex I to the present report.

7. The Special Representative wishes to express his appreciation to the Government of Cambodia for the access which was provided to Government officials. During his sixth mission he met with the Chairman and the First Vice-Chairman of the National Assembly, ministers, the governors of Kampot and Kampong Cham Provinces and of Kep Municipality, many national and local officials as well as representatives of non-governmental organizations (NGOs) and citizens. Once again, the Special Representative would record the great honour which he was accorded by having been received in audience on 16 August 1995 by His Majesty Preah Bat Samdech Preah Norodom Sihanouk Varman, King of Cambodia. His Majesty's constitutional position as protector of rights and freedoms and guarantor of international treaties ratified by Cambodia, as well as his many interventions in the defence of human rights, have continued to encourage and inspire the work of the Special Representative and of the office of the Centre for Human Rights.

II. SIXTH MISSION TO CAMBODIA OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL

8. The present report is based on the findings of the Special Representative on his sixth mission to Cambodia in August 1995, as well as his ongoing observations and information provided to him by the Government of Cambodia, the Centre for Human Rights and other sources.

9. In March 1995, the Government of Cambodia addressed a letter to the Secretary-General, signed by the two Prime Ministers, to explore the possibility of the Centre terminating its mandate in the country by the end of 1995 and continuing its technical cooperation activities from its headquarters in Geneva. In their letter, the Co-Prime Ministers indicated that they would continue to welcome the visit to Cambodia of the Special Representative and would continue to accord every cooperation to him and to visiting experts from the Centre. Consequentially, the Secretary-General appointed his Special Envoy, Mr. Marrack Goulding, Under-Secretary-General for Political Affairs, to visit Cambodia to discuss the suggestion. The Special Envoy's mission resulted in agreements not only on the maintenance of the office in Cambodia but also on various steps to be taken to enhance the relationship between the Government of Cambodia and the Centre (see A/50/681/Add.1, paras. 8-10). In the spirit of the agreement for enhanced consultation, the Special Representative during his sixth mission offered to call to particular notice matters included in the present report which might have required special attention and comment by the Government.

10. Unfortunately, it did not prove possible for the Co-Prime Ministers to receive the Special Representative. However, he met with several other ministers. As in the past, an advance copy of a draft of the present report was provided to the Government. The Centre for Human Rights, in pursuance of the aforesaid agreement, has drawn to notice the matters there contemplated.

III. HUMAN RIGHTS RECOMMENDATIONS

11. During the period since his last report to the General Assembly, the Special Representative has regularly submitted to the Government of Cambodia confidential letters containing recommendations on human rights issues. Unfortunately, as mentioned in that report (A/49/635, para. 46) difficulties appear to have continued within the Administration of Cambodia in the consideration of those recommendations. Although receipt of recommendations has been acknowledged in some cases, the Special Representative is unaware of the action, if any, taken upon most of them. The recommendations submitted between August 1994 and August 1995 are contained in annex II to the present report, together with a summary of any action known to have been taken by the Government. The Special Representative will continue, where appropriate, to keep those recommendations under review. He suggests that the Government of Cambodia set in place a regular procedure for the reception, consideration and follow-up of the recommendations. Consideration of them should be included in the above-mentioned enhanced consultations between the Government and the Centre for Human Rights. If possible, technical assistance should be offered to the Ministry of Foreign Affairs by the Centre for Human Rights to assist in analysing the information.

IV. ACTION TAKEN ON EARLIER REPORTS

12. The General Assembly, in paragraph 6 of its resolution 49/199, requested the Special Representative, in collaboration with the office in Cambodia of the Centre for Human Rights, to undertake an evaluation of the extent to which the recommendations made in his reports were followed up and implemented. The Commission on Human Rights adopted a similar recommendation in its resolution 1995/55, paragraph 7. Having regard to the very many recommendations that have been made by, and the resources available to, the Special Representative and the office, it has not been possible to complete this task in time for the present report. The Special Representative has set in motion, in collaboration with the Centre, the preparation of a response to the request of the General Assembly and the Commission on Human Rights. That evaluation will have to be discussed with the Government of Cambodia in the spirit of the agreement reached between the Government of Cambodia and the Special Envoy of the Secretary-General of the United Nations. An opportunity for input and commentary will be afforded to the Government of Cambodia to ensure that all recommendations which have been acted upon or considered are so reported. Urgent recommendations concerning priority matters of human rights requiring the attention of the Government of Cambodia are set out in annex II. An examination of the responses since the last report will indicate, in general terms, the responses of the Government to the recommendations deemed by the Special Representative to have priority and urgency. The terms of annex II speak for themselves. In the next report, the Special Representative will include the first section of his response to the request of the General Assembly for an evaluation of the action on the numerous recommendations contained in his earlier substantive reports.

13. An initial assessment suggests that most of the recommendations made in earlier reports remain to be implemented. In many cases, neither the Special Representative nor the Centre for Human Rights is aware of the action, if any,

which the Government has taken. In other cases, implementation of the recommendations require resources - financial, technical and human - which are not necessarily available to the Government (health, education, improvement of physical conditions of prisons, etc.). A number of comments should be made in considering this apparently disappointing picture and in securing a proper evaluation of the impact and utility of the recommendations:

(a) Prior to the Paris Agreements, the setting-up of the United Nations Transitional Authority in Cambodia (UNTAC) and the establishment of the Kingdom of Cambodia, the administration of Cambodia was shattered and substantially dislocated by more than 20 years of revolution, war, genocide, invasion and international isolation;

(b) The Government of Cambodia faces today, as it has during the whole period of the appointment of the Special Representative, enormous difficulties in re-establishing civil government (a functioning competent administration, the rule of law, good governance and an independent judiciary and National Assembly) and rebuilding an effective public infrastructure, responding to the continuing security difficulties and to the needs to encourage economic expansion and regrowth;

(c) Some recommendations may be adopted or considered administratively following discussion between the Cambodian Government and the Special Representative, officers of the Centre, human rights NGOs and others. Other recommendations may be included in government programmes, to be pursued when funds permit. Recommendations, e.g., for the improvement of the physical conditions of prisons are generally welcomed in principle by officials who are obliged simply to await funds to achieve improvements. Several NGOs and international donors have been encouraged by the Centre for Human Rights to contribute funds towards the implementation of suggestions contained in the reports;

(d) The enhanced procedures for consultation will, it is hoped, encourage earlier and more active attention to the recommendations contained in the reports of the Special Representative and in his human rights recommendations addressed to the Government. The Special Representative and the Centre for Human Rights should also continue to contribute actively to encourage the community of donors to consider funding assistance to help the Government to implement these recommendations, as necessary;

(e) Notwithstanding the above considerations, the failure of the Government of Cambodia to acknowledge and to respond to the recommendations and the reports of the Special Representative is less than satisfactory.

14. The Special Representative considers that it is not possible, for the time being and in the light of the above, to offer a full evaluation of the Cambodian Government's follow-up and implementation of earlier recommendations. He has set in preparation a more detailed analysis and evaluation, which will be offered in later reports. The position should be kept under review.

V. UPDATE ON SELECTED HUMAN RIGHTS ISSUES

A. Right to health

15. There have been few important developments in the achievement of the right to health since the last report. A recent report of the United Nations Children's Fund (UNICEF) has confirmed that the quality of health in Cambodia has remained one of the lowest in the world. The budgetary allocation for health also remains one of the lowest in the world and the lowest in the region. A draft law on expired and ineffective pharmaceutical drugs has been prepared. It was reported to the Special Representative that new attention was being paid to programmes of birth spacing and population control. The appearance in squatter communities, visited by the Special Representative, of very large numbers of young children living in poverty, receiving little or no education, suggests the need for continued national attention to birth spacing policies. In the wake of the war and genocide, it was understandable that such programmes were not initiated earlier. However, they would now clearly be timely.

16. The national campaign against the spread of HIV/AIDS appears to have been set back, at least in Phnom Penh, by the decision of the capital Municipality to close access to the Tuol Kork dike brothel area, to harass commercial sex workers (prostitutes) and to remove public posters promoting the use of condoms. These issues were discussed by the Special Representative with the Mayor of Phnom Penh and members and officers of the City government. They were also discussed with the governors of Kampot and Kampong Cham provinces. The difficulty and sensitivity of the issues raised by the Special Representative are not underestimated. Strong public protests were said by the Mayor of Phnom Penh to have been received about the posters, originally authorized by the City government. They were allegedly described by some citizens, particularly women, as "obscene". Smaller posters are said to be in the process of being placed in brothels but not on public display. The temporary closure of the Tuol Kork road area has occasioned vehicular traffic problems and had the consequence of the opening of brothels in other areas of Phnom Penh. The Special Representative was informed that a draft law on kidnapping, trafficking and exploitation of persons was nearing completion. It seems that this will not now impose criminal sanctions on sex workers previously proposed but will provide such sanctions for brothel owners and traffickers. The Special Representative toured Phnom Penh at night with members, Khmer as well as international, working with Friends, an NGO devoted to assistance to street children. He saw and spoke to young children, some of whom had allegedly been engaging in prostitution. Clearly, there is an urgent need to establish and enforce laws for the protection of the young and to provide warnings against the dangers of HIV/AIDS and information about the means of transmission and of self-protection. The Special Representative welcomes a decision of Cambodian journalists, reported in August 1995, to improve and increase media reportage of the issues of HIV/AIDS.

17. One of the sites visited by the Special Representative was in Chamcar Bei Village, in the Kep-Bokor Special District. In that area, housing is being developed for families whose members have defected from the Khmer Rouge under an amnesty offered by the Government. A hospital and a school were under construction during the visit. Although the Special Representative was told of a number of similar improvements in the health infrastructure of Cambodia, he

received many reports of substantial monetary charges being made for health-care services by staff, even in public hospitals. Such charges impose a special burden upon poor families which have little or no capital or income.

B. Right to education

18. The national budget for education remains very low, only 1/12th of the total. Once again the Special Representative noted the positive attitude evidenced by Government officials, both in Phnom Penh and the provinces, concerning education in human rights. At the school for police cadets at Kep he gave a lecture on the subject to the new police recruits and answered their questions. At a meeting with the Co-Minister of Interior (Mr. Sar Kheng) he commended the ministry for its cooperation with efforts at human rights education of the police, with the assistance of local human rights NGOs.

19. At Chamcar Bei Village the Special Representative saw the school building under construction for use by the children of defector families. Such developments are most welcome. However, as in health care, there were reports in other areas visited that teachers, unable to survive on the extremely low salaries paid by the State (reportedly approximately $US 20 per month), are obliged to supplement their incomes by charging for what in wealthier societies would be regarded as basic education. The imposition of such charges especially disadvantages the children of poor families.

20. In squatter communities visited in Phnom Penh, NGOs have arranged some basic education for children of the communities. However, in the case of most children in illegal squatter communities, access to education is extremely restricted.

21. The Special Representative is pleased to record the excellent cooperation received by the Cambodia office of the Centre for Human Rights, from the ministries of Defence, Interior and Justice. The Ministry of Defence organized workshops in the provinces for the Centre's Military Assistance Programme (see A/50/681/Add.1, para. 67). The Ministry of Interior is working with a number of Cambodian NGOs which are conducting police training (ibid., para. 98). The Ministry of Justice has arranged for the Centre to conduct, in September and October 1995, human rights training for new judges (ibid., para. 65). While in Kampong Cham, the Special Representative presented to members of the judiciary copies, prepared by the Centre for Human Rights, of the laws of Cambodia enacted by the National Assembly and of the human rights covenants to which Cambodia is a party, all of them in the Khmer language. The office has also provided human rights training for the staff of the new Youth Rehabilitation Centre for Juvenile Offenders. The Special Representative welcomes the reports of the high level of cooperation received from the Director of the Youth Rehabilitation Centre, who is the special representative of the Co-Prime Ministers.

C. Right to work

22. The Special Representative again commends the work of NGOs, international aid organizations and United Nations agencies in stimulating work promotion

programmes throughout Cambodia. He saw the work of the International Labour Organization illustrated in the establishment of the village for defector families at Chamcar Bei. He received comprehensive reports on the provision of rice in various parts of the country by the World Food Programme (WFP) in its Food For Work Programme. In particular, the Special Representative wishes to commend the work of the NGO United Cambodian Communities (UCC) in Kampot Province which has successfully promoted numerous community-based training and income-generating projects for especially vulnerable groups, such as women, war invalids and the handicapped.

23. It is appropriate to record that over the period of the Special Representative's appointment, there has been a noticeable improvement in the economic life of Cambodia, in Phnom Penh and in some of the provincial cities visited. In some rural areas of the country the economic improvements, visible in the cities and towns, is not apparent. The Special Representative considers that improved economic conditions, especially if extended to rural districts, will reduce the risks and dislocation of security challenges and contribute beneficially to the growth of civil society. This can only enhance respect for basic human rights. The Special Representative is appreciative of the need for effective political government in Cambodia in ensuring the continuance of the economic achievements that have been made to date. Those achievements promise improved investment, job opportunities and work for the people.

D. Right to housing

24. The Special Representative inspected squatter communities and their housing in Phnom Penh, both in the centre of the city and in its outer suburbs. He received detailed briefings on the forced evictions carried out by police and the armed forces. Because of the dislocation caused by Cambodia's recent history - and in particular the forced clearance of cities and towns, the death of many landholders, the demobilization of the armed forces and the defects and uncertainties of the land law - thousands of Cambodians have been forced to seek shelter in squatter communities. Most of these involve housing which is primitive and makeshift, providing no access to water and sewerage facilities, regular garbage disposal, education and other public services. Some involve semi-permanent structures but without assurance of continued right of occupation. According to information received by the Special Representative, many of the squatters have been resident in their settlements continuously for more than five years, which entitles them to legal ownership of the land under the State of Cambodia (SOC) land law. Others moved into already established squatters' areas or formed new ones during the transitional period or after the elections. Some claim to have been denied housing because they are not associated with successful political parties or because they were orphans, refugees or other disadvantaged people who returned to the city or town too late, or were too powerless, to secure access to free housing in premises abandoned by their former owners. Several typical cases recounted to the Special Representative were:

(a) That of a soldier who stated that he had returned to his village to find that his farm had been divided in his absence, forcing him to go back to Phnom Penh and to live in a squatter community;

(b) That of a soldier in a former opposition army who had been reintegrated into society but had not been provided with adequate land or housing;

(c) That of a head of family who had left his village in 1979 and could not make a living upon his return, as all of his relatives had been killed in the previous two decades.

25. The information received by the Special Representative from members of the squatter communities included:

(a) Absence of an overall governmental policy to deal with the problems of housing for displaced squatters;

(b) Lack of court authorization and supervision of forcible evictions from land, often performed with little advanced legal notice by the authorities;

(c) Threat and use of violence and loss of personal property in the course of forced evictions;

(d) Absence of compensation and failure to provide suitable alternative land for squatters displaced by evictions;

(e) Lack of water, sewerage and other public facilities to squatter communities;

(f) Lack of support by the NGO community for squatters. The Urban Sector Group (USG) is one of the few NGOs paying specific attention to the needs of the squatters.

26. Many squatters and squatter representatives whom the Special Representative met during his mission acknowledged the inevitability of the removal of squatter communities from places close to business or tourist centres. However, their complaints concerned the lack of recognition of their rights, including those to advanced notice and compensation, and the manner in which current eviction policies were being effected.

27. The Special Representative brought the concerns of the squatters to the notice of representatives of the Government. In particular, he had a very constructive meeting with the Mayor of Phnom Penh (Mr. Chhim Siek Leng) and the Deputy Mayor of the City (Mr. He Kann). They stated that many squatters had other places to stay and that they should be returned to the provinces to assist in the harvesting of rice on their farms. Some funding to return those removed from squatter settlements was provided. However, it was acknowledged that many of those forcibly sent to the provinces quickly found their way back to the capital city.

28. The Special Representative also examined the special problems of street people and street children. A national policy to clear such persons on a voluntary basis from the streets, parks and other public places through an Inter-Ministerial Commission appears to have been supplemented by a so-called "immediate plan" aimed at a more rapid expulsion of such people from Phnom Penh

by the capital's administration. The given reasons for this "plan", which has been effectively implemented, were the needs to:

(a) Reduce petty crime and disorder associated with such persons;

(b) Remove the affront to the "honour" and to the improving appearance of the City as a business and tourist attraction;

(c) Act during the rainy season when street people have little or no shelter against heavy rain and become prone to illness.

The Special Representative received vivid descriptions of the round-up of street people. In his own observation, there were many fewer such people visible in Phnom Penh, including fewer street children, in August 1995 than during previous missions.

29. The Special Representative acknowledges the acute difficulties faced by the Mayor and officers of the Municipality of Phnom Penh in dealing with squatters and street people. It is important, however, to keep in mind the requirements of article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, to which Cambodia has acceded; article 25, paragraph 1, of the Universal Declaration of Human Rights; and resolution 1993/77 of the Commission on Human Rights, on "forced evictions", which have been brought to the notice of the Mayor of Phnom Penh by the Centre for Human Rights in the past. Furthermore, in respect of the rights of children in vulnerable groups, article 27 of the Convention on the Rights of the Child, to which Cambodia has acceded, is relevant, as is article 44 of the Cambodian Constitution. The latter protects private property. It requires fair and just compensation in advance of any confiscation. Article 74 of the Land Law of the former State of Cambodia, not repealed or amended, grants legal ownership to land to persons who have temporarily and peacefully possessed the land for five consecutive years or more. Many squatters seen by the Special Representative appear to fall within the terms of this law but have not been given its protection.

E. Right to a healthy environment and to sustainable development

30. The Special Representative continues to receive reports of the large-scale export of timber from Cambodia despite the prohibition on unlicensed logging imposed by the Government of Cambodia as from 1 January 1995. A substantial export trade reportedly continues, including from areas still controlled by the Khmer Rouge in western Cambodia. This trade undermines the Government's commitment to control logging and to confine it to cases of responsible reforestation. It helps fund the continued armed anti-Government activities of the Khmer Rouge. It also has serious effects on the environment, with grave consequences for the rice harvest, soil erosion, survival of fauna and flora and the economic life of most of the population in Cambodia.

31. The foregoing concerns have attracted the attention of international observers, such as the Chairman of the United States Senate Subcommittee on East Asian and Pacific Affairs (Sen. C. Thomas) (United States Senate, 21 July 1995) and NGOs, such as Global Witness (see "Thai-Khmer Rouge links and the illegal

trade in Cambodia's timber", July 1995). In a statement on 3 August 1995, the First Prime Minister of Cambodia (H.R.H. Prince Norodom Ranariddh) expressed the Government's concern about the state of the environment and deforestation in Cambodia. He stated that firm policies had been adopted to deal with illegal felling of trees, their export and sale. He stated that a logging contract, awarded to the Samling Corporation, would provide 40,000 jobs and provide timber only for use within Cambodia in strict compliance with reforestation and protection of the environment. This issue will continue to receive the close attention of the Special Representative. Some of its implications, which are relevant to the mandate of the Special Representative, have been raised with a neighbouring country for comment.

F. New laws and practices

32. The Special Representative notes that an Immigration Law (but not a law on nationality or refugees) has been enacted. Defects in the Immigration Law, noted in earlier reports, remain. The current implementation practices also give rise to concern. The Special Representative also notes that the Press Law has been enacted. Some of the defects, noted in earlier reports, remain. Anticipated subordinate legislation, to define terms in that law, has not yet been enacted (see sect. G below). One law, the Law Regulating the Civil Servants, passed in October 1994, contains an article 51 that provides a measure of immunity from prosecution to all civil servants in certain cases. The law needs to be revised (see chaps. V and VI below).

33. Another important law enacted by the National Assembly since the last report is the Law on the Bar Association. As originally proposed, the law would have inhibited or curtailed the work of the human rights Defenders who have been trained to represent accused persons in Cambodian courts. Such Defenders frequently appear in cases involving human rights concerns and usually without fee. Such Defenders have performed very important work. The proposal to withdraw their rights of audience in criminal proceedings in Cambodian courts was opposed by many persons and bodies. It was the subject of a human rights recommendation by the Special Representative to the Government (see annex II, HR REC 5/95). Eventually, as a result of amendments adopted by the National Assembly, the law permitted Defenders to continue to practise in such cases until the end of 1997. It is expected that by that time the first law graduates will be ready for practice. The need for more public Defenders is unlikely to abate. The law will need to be reconsidered as the current extended deadline approaches. It is the view of the Special Representative, and of the Cambodian judges with whom he discussed the work of defenders during his sixth mission, that the assistance of an experienced defender is often essential for the proper performance of the judicial function in serious criminal trials.

34. Pending draft laws of relevance to human rights include those on anti-corruption, labour, kidnapping, trafficking and exploitation of persons, associations, control of pharmacies, anti-personnel land-mines and nationality.

G. Independence of the judiciary and the rule of law

35. Most of those problems relevant to the independence of the Judiciary which were recorded in earlier reports of the Special Representative, remain to be resolved. A fundamental problem is the provision of a judicial salary of 50,000 riels per month (about US$ 20). As previously reported, this is totally inadequate to secure both the reality and the appearance of the independence of the judiciary in Cambodia. It is clear that judges' legal skills have greatly improved in the past two years. However, the opportunities available to medical practitioners and teachers to supplement their income by fees or other means should not be available to judges. Cambodia's judges sometimes deal with cases involving extremely valuable property. Thus, in a case before the Cambodian courts when the Special Representative was in Cambodia, accused were brought before the Court charged with importing heroin alleged to be worth millions of dollars in street value. The reality and appearance of independence and integrity require that judges be put beyond the temptations of corruption. This is next to impossible if they are in any way dependent for their income upon those who are brought before them.

36. The Special Representative discussed the foregoing problem very candidly with judges. They pointed to the monthly salary voted by members of the National Assembly to MPs amounting to the equivalent of about US$ 1,800 per month. The judges suggested that a monthly salary of an amount equal to about $400 per month would be appropriate for judges and prosecutors. According to the Ministry of Justice there are currently 135 magistrates in Cambodia. Another 42 judges are undergoing training. Under the Constitution and law of Cambodia, judges are not civil servants. However, many complaints and suggestions critical of alleged judicial partiality, and even corruption, have been received by the Special Representative. While many of them are doubtless baseless, until the levels of the salaries of judges are significantly increased, the allegations will continue to be made and accepted by the public. It is essential to an independent judiciary that it be manifestly beyond the actuality or appearance of temptation to corruption. Judicial corruption strikes at the foundation of the rule of law.

37. One matter pertinent to the observance of the rule of law which was the subject of representations by and to the Special Representative during his sixth mission concerned the expulsion of a member of the National Assembly. When the member proceeded to the Municipal Court to challenge his removal from his party, prior to his expulsion from the Assembly, it ruled that it did not have the jurisdiction to entertain the challenge (see also para. 49 (a) below). Because the Constitutional Council envisaged by the Constitution of Cambodia has yet to be established, there was no judicial body in Cambodia with the jurisdiction to rule authoritatively upon the constitutionality of the expulsion.

38. The difficulties of rendering powerful persons answerable to the rule of law continues in the ways mentioned in previous reports. However, there are new cases and problems. These include the following:

(a) Very frequent reluctance by the police to arrest, and by the courts to charge, persons holding military office even for serious and obvious criminal offences and even when caught in the commission of the act. A notorious case of

this kind was that involving Lt. Col. Sath Soeun. In May 1995, he was acquitted by the Kampong Cham Court of a charge of murdering a journalist in respect of which there was strong circumstantial, but no direct, evidence. On 25 July 1995, in the presence of several police and Gendarmerie officers, he allegedly outrightly killed a 16-year-old youth named Pao, who was suspected of burglary in a house in Kampong Cham. Having allegedly cornered the youth in the house, it is claimed that Lt. Col. Sath Soeun deliberately opened fire at very close range on the youth with the intention of killing him. As the youth was still alive, Lt. Col. Sath Soeun is said to have returned to the boy and finished him off with three more bullets, two of which hit him in the back of the neck. Instead of arresting Lt. Col. Sath Soeun for this obvious homicide, the police allowed him to depart. When an arrest warrant was issued by the Kampong Cham Court, the accused decamped. He was reported to have fled to another province. He was still at large when the Special Representative discussed the case with officials in Kampong Cham and with the Co-Minister of Interior;

(b) The difficulty of securing the extradition or return of accused persons from other provinces to the province of the court of trial has been reported to the Special Representative by many judges and prosecutors. In default of proper budgetary provisions to secure the execution of a warrant of arrest in another province, the court or prosecutor is often obliged to rely on the provision of funds by the family of the victim or complainant;

(c) There appears to be no effective remedy to oblige a person to give evidence as witness before the court and, under penalty of default, to return to the court of trial to give evidence in a trial;

(d) In October 1994, the National Assembly enacted the Law Regulating Civil Servants. Article 51 of that Law provides a wide measure of effective immunity to all civil servants. In the cases specified, unless the Council of Ministers or the ministers consent, a civil servant may not be proceeded against except in case of an offence where he or she has been apprehended in the course of committing the offence or immediately thereafter. This law, which may have been designed to reduce inconvenience imposed on the hard-pressed Cambodian administration, or to prevent the abuse of process against high officials, has, as the Special Representative was informed in many instances, led to an effective immunity from prosecution of persons whose designated superior fails or refuses to respond to the relevant court's request for the issuance and execution of a warrant. There is also uncertainty as to whether the definition of "civil servant" in the law includes military officers. However, the Special Representative was informed that in some Cambodian courts accused military were taken as being within the requirement of the law. Interpretation of this law varies considerably. The Ministry of Justice has attempted to alleviate the problem by enacting subordinate legislation. However, the Special Representative was informed, in at least one court, that the judges (properly in his view) did not consider that the Minister's instruction could lawfully override the law made by the National Assembly and expressed in apparently clear terms. It is unfortunate that those terms are so discriminatory. They have the effect of relieving persons in authority of the operation of equality before the law. This problem was drawn to the attention of the Minister of Interior and the Minister of Justice.

H. Prisons and other custodial institutions

39. During his sixth mission the Special Representative visited prisons in Kampot and in Kampong Cham. Each was in a very poor state of repair. Each requires the investment of considerable funds to improve the basic buildings and facilities for prisoners and officials alike.

40. The prison of Kampot comprises a number of dilapidated buildings in a poor state of repair. Some cells were disused because of leaking roofs and collapse of concrete benches. In a break-out in May 1994, two prisoners were killed by a prison guard. Allegedly the two, who had raised their hands in surrender, were shot at very close range and killed by the guard, who was under no threat. No sanction, administrative or judicial, was taken against the guard, who is still in service in the prison. The case was brought before the court, which ruled that there was not enough evidence to prosecute the guard. The discipline of the prison became extremely strict following another prison break-out, in June 1995, of 13 prisoners, only 2 of whom had been recaptured. Prisoners in Kampot, to whom the Special Representative was afforded private access upon an undertaking of non-retaliation, complained about collective discipline which, they said, had been instituted since the dismissal of the prison commander after the escapes. Matters brought to the particular attention of the Special Representative included:

(a) The use of one dark cell (and the existence of several others) with only a small shaft of light, for specific discipline and, allegedly, on first arrival in the prison as a warning and inducement to good discipline;

(b) The use of iron leg shackles, which were seen in the dark cell in use and are apparently in regular use;

(c) The shortage of time allowed to prisoners to be outside their cells;

(d) The lack of educational facilities, newspapers and other reading matter and sporting facilities;

(e) The difficulties in securing contact with human rights NGOs and defenders unless initiatives are taken by relatives or friends outside the prison;

(f) Uncertainty about the date of trial.

After discussion with the Special Representative, the prison commander undertook to endeavour to ameliorate the above strict regime.

41. The prison at Kampong Cham was even more unsatisfactory. It was formerly a school building and its security arrangements and facilities are also completely unsatisfactory. Fear of the escape of prisoners had caused the Prison Commander to require that the prisoners be locked in their cells for extended periods of time (allegedly 23 hours a day). Although the cells are large and the conditions not as cramped as at Kampot, the dark, damp conditions observed by the Special Representative were extremely unhealthy. Toilet facilities were primitive. Prisoners, whom the Special Representative was permitted to

interview in private, complained of the length of their confinement to cells, the lack of time for sport and exercise, the lack of facilities for medical treatment (two young prisoners complained of untreated syphilis) and virtually complete lack of diversion. As a result of the intervention of the provincial office of the Centre for Human Rights, arrangements had been made with WFP for a supplement of good-quality rice. However, this temporary facility will shortly expire. The earlier dietary provision was reported to be unsatisfactory. The condition of the female prisoners was marginally better. As a result of the intervention of the Centre's provincial office, the female prisoners had been trained in machine sewing. They showed the Special Representative samples of clothing they had made. The condition of facilities for the guards was also poor. The District Police Commander and the Prison Commander appealed for a supply of medicines for use by the prison nurse and for help in the provision of a generator for electricity for the prison and well digging equipment for access to water which, in the dry season, must often be purchased from water vendors.

42. The Special Representative takes note of the ongoing preparation of prison regulations by the Ministry of Interior and the assistance provided by the Centre for Human Rights. An Australian Aid Agency (AUSAID) mission has also visited Cambodia to assess the needs in the area of prison reform, among others. This is particularly important owing to the rapid rise in the number of inmates in Cambodian prisons, particularly since the beginning of 1995. According to the Prisons Department, the total number of inmates at the time of the visit was around 2,500. A number of prisons, including Prey Sar in Phnom Penh, Kampong Speu and Kampong Chhnang, suffered severe water shortage during the dry season.

43. A major prison escape occurred in Siem Reap in May 1995. Approximately 51 prisoners escaped, 28 were recaptured and 2 died as a result of bullet injuries during apprehension. A number of recaptured inmates were allegedly tortured after recapture. An internal investigation conducted by the Ministry of Interior reportedly concluded that the escape was made possible through negligence on the part of the prison officers. No conclusion however was reportedly reached on the allegations of torture which were brought to the attention of the investigation team. The results of the investigation have not been made public.

I. Freedom of expression and the Press Law

44. The Special Representative welcomes the continued activity of many media outlets in Cambodia. There are over 50 electronic and print media outlets in regular operation. He also welcomes the continued good work of the Cambodia Communication Institute, a project of the United Nations Educational, Scientific and Cultural Organization (UNESCO) funded through the International Programme for the Development of Communication. It has organized conferences and seminars and published important documents in the Khmer language for use by and in the press, including a copy of the Alma Ata Declaration on Promoting an Independent and Pluralistic Asian Media. An Asia-Pacific Regional Conference organized under the auspices of the International Federation of Journalists and hosted by the Khmer Journalists' Association, was held at Phnom Penh from 24 to 28 July 1995. It was addressed by several Cambodian leaders and attended by many journalists. Its closing consensus statement emphasized that media

scrutiny of the exercise of political power was essential in a democratic society; that all media laws should conform to international and constitutional standards; and that journalists themselves have a duty to work to the highest professional standards. The latter was a point made earlier by the Special Representative at a joint UNESCO-Centre for Human Rights Round Table on Journalistic Ethics and Defamation, held at Phnom Penh on 27 January 1995.

45. The Press Law, which has been the subject of several written representations and recommendations to the Government as well as previous reports by the Special Representative, was adopted by the National Assembly on 18 July 1995. The final text of the Law contained a number of improvements upon earlier drafts, which are welcomed by the Special Representative (see also A/50/69/Add.1, paras. 33-35). However, there remain provisions in the law which give rise to serious concern. These have been shared in writing and orally with the Government of Cambodia by the Special Representative (ibid., para. 34) (see also sect. VI, H below and annex II, HR REC 24/94 and 7/95):

(a) It is still unclear whether the law, which contains a provision purporting to repeal earlier laws relating to the press, excludes the operation of the provisions of the Penal Law which allow for imprisonment of journalists, among others, for defamation, disinformation and incitement;

(b) The definition of "national security" was removed, leaving offences by the media in this regard undefined and potentially unclear;

(c) Similarly, the provision for offences in relation to "political stability" was undefined, the phrase not being a legal term;

(d) The power given to the Ministries of Information and Interior to confiscate newspapers and for the Ministry of Information to suspend press organs without authority of a court order is clearly undesirable;

(e) The provision for prohibiting "humiliation of national institutions" is contrary to the Constitution and established international human rights norms, which protect individuals and people and not institutions.

46. During 1995, as at the time of writing, no journalist has been imprisoned or killed in Cambodia for reasons related to the exercise of freedom of expression. However, no one has been punished for the murder of two journalists in September and December 1994. In the case of the murder of Noun Chan, editor of the newspaper Samleng Youvechun Khmer (Voice of the Khmer Youth), two suspects were arrested by the Phnom Penh Judiciary Police. However, contrary to law, they were detained incommunicado for over 40 days, thereby exceeding the legal delay of 48 hours, without being brought before a judge, and while under such detention they were allegedly forced to confess their guilt. They were eventually brought to the Prosecutor's office. The Court ordered their release as it could find no evidence against them. No action, administrative or judicial, was taken against the police officers responsible for their illegal detention, ill-treatment and forced confessions. No one else has to date been brought to justice for the murder of Noun Chan. In the case of the murder of Koh Sontapheap (Island of Peace) newspaper journalist Sao Chan Dara, a suspect, army Lt. Col. Sath Soeun, was tried and found innocent by the Kampong Cham court.

47. Cases of restrictions of freedom of expression continue to come to the attention of the Special Representative and appear to involve departures from the norms contained in the provision of the Constitution of Cambodia and in article 19 of the International Covenant on Civil and Political Rights, which Cambodia has ratified. These include the following:

(a) The suspension of publication by administrative order, on 15 February 1995, without court order, of the newspaper Odom Kete Khmer (Khmer Ideal) "until the new Press Law is adopted". This purported order appears to have violated the then existing law limiting any such suspensions to a period of 30 days. It was the subject of a representation to the Government by the Special Representative;

(b) The conviction and the sentence to a large fine of the editor of the newspaper Samrek Reask Khmer (Cry of Khmer People) on 21 February 1995, for publishing two articles expressing strong political opinions, although with the use of insulting words;

(c) The conviction and sentence to one year's imprisonment and a large fine on 27 February 1995 of Mr. Chan Rattana, the editor of Voice of Khmer Youth, for the expression of opinion, although with the use of insulting words. The journalist has appealed against his sentence, which has been suspended pending the determination of an appeal;

(d) The conviction and sentence to a large fine of the editor of the newspaper Khmer Ideal on 19 May 1995, for publishing an article expressing political opinions. Non-payment of the fine would result in a two-year sentence. The newspaper was also shut down. The sentence has been suspended pending appeal;

(e) The conviction and sentence to one year's imprisonment and a large fine of the editor of the newspaper Sereipheap Thmei (New Liberty News) on 20 May 1995, for publishing an article expressing strong political opinions. Non-payment of the fine would add another year to the sentence. The newspaper was also shut down. The sentence has been suspended pending appeal;

(f) On 22 June 1995, a member of the National Assembly of Cambodia and former Minister, Mr. Sam Rainsy, having been expelled by the political party in whose interest he had been elected to the National Assembly, was removed from the Assembly. He claimed that the expulsion had arisen out of his expression of opinion both within and outside the National Assembly. This case is dealt with below (see para. 49 (a)). In his statement on 3 August 1995, the First Prime Minister explained the expulsion as being the result of the member's failure to "toe the ... Party line" and to resolve any issues within the party apparatus and not to fight it in public, giving unwarranted advantages to undesirable elements. It is not unusual in democracies for members of political parties to sacrifice certain rights to uninhibited expression for the sake of party unity. This can be inferred from party membership. What was unusual in this case was the expulsion of the member from the National Assembly and the failure of the Assembly to afford the member the right to be heard in his own defence before this serious step was taken;

(g) The arrest on 5 August 1995 in Phnom Penh of six men for flying balloons and distributing pamphlets in a public place concerning political affairs. The men were detained without charges at the Municipality Police Commissariat until 11 August 1995, when they were transferred to prison. They were not brought before a judge until 16 August 1995. The pamphlets concerned were read, in English-language translation, by the Special Representative. They contain no apparently inflammatory language nor were they an apparent incitement to unrest. In the opinion of the Special Representative, they are merely the peaceful expression of political opinions. In addition, the failure to bring the accused within 48 hours before a judge upon charges filed by a prosecutor appears to have been in breach of Cambodian law, as well as of article 9 of the International Covenant on Civil and Political Rights. 4/ On 16 August, the six were detained by a judicial order for four months under article 60 of the UNTAC provisions relating to the Judiciary and Criminal Law and Procedures applicable in Cambodia for incitement. The Special Representative, while on his sixth mission, made representations both orally and in writing regarding the rights of the accused (see annex II, HR REC 9/95).

J. Right to be elected and to take part in Government

48. In his last report (A/49/635), the Special Representative expressed concern at the widely reported threats to members of the National Assembly who had expressed, both within and outside the Assembly, opinions differing from those of the Government. The existence of such threats was disputed by the Government of Cambodia. The Special Representative must now report on further developments relevant to the right to be elected and to take part in government.

49. The Special Representative wishes to stress, as he did at all official meetings at which this issue was discussed, that it is neither his intention nor his responsibility to become involved in Cambodian political affairs. In accordance with his mandate, the Special Representative is concerned with this matter only in so far as it may imply deviations from internationally recognized human rights norms. The new developments are as follows:

(a) On 22 June 1995, the National Assembly, without permitting debate, expelled a member originally elected as a member of the Constituent Assembly from Siem Reap. The member, Mr. Sam Rainsy, had earlier been expelled from the United National Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC) party, the largest political party represented in the National Assembly and the party of the First Prime Minister. The right of a political party to expel a member from it is not doubted. The issue presented by the case is the legality of the action taken by the National Assembly and its implications for the protection of human rights in Cambodia. The existence of a strong, independent and National Assembly which respects the law is self-evidently essential to the effective protection of human rights in Cambodia. The Constitution of Cambodia, in its article 95 provides for only three cases of removal of an elected member, viz., death, resignation and departure (i.e., from the National Assembly). There is no fourth case, i.e., of loss of party membership. This constitutional scheme has been confirmed and repeated by the use of similar language in the UNTAC Electoral Law, article 78 (2), and the internal rules of the National Assembly itself, principle 83. For such a

serious step as expulsion of a member, in such circumstances, it would have been expected that an express ground would have been provided, if such had been intended. The Special Representative drew this advice to the attention of the Government and the National Assembly in May 1995. He repeated it in oral explanations at a lengthy session at the National Assembly on 11 August 1995 at which he was privileged to meet the First Vice-Chairman of the National Assembly, Mr. Loy Sim Chheang, and the chairmen and other members of the Commissions of the National Assembly. On 26 July 1995, the Special Representative was also obliged to bring to the notice of the Government of Cambodia allegations of unlawful arrest, detention and ill-treatment performed by persons, apparently in military uniform, on the house guards of the expelled member, which took place in Phnom Penh on 13 July 1995. So far, no redress has been provided for these complaints of assaults and arrests;

(b) Following the above expulsion, a factional dispute broke out in the Buddhist Liberal Democratic Party (BLDP), the smallest of the three parties in the coalition Government. After a threat to expel a member of one faction from the party (with the danger, upon the above precedent, of loss of his seat in the Assembly), moves were taken to expel from BLDP six members of another faction who are members of the National Assembly. Concern about this possibility and its implications for the continued effectiveness of the National Assembly were expressed by the Special Representative to members of both factions of BLDP and to the National Assembly members present at the meeting on 11 August 1995, as described above. This concern was further expressed to His Majesty King Sihanouk and to the Chairman of the National Assembly, Mr. Chea Sim, on 16 August 1995. During the Special Representative's sixth mission to Cambodia, and while these developments were occurring, one member of BLDP died in the National Assembly building, reportedly by suicide. One of the notes allegedly left by him referred to his distress about party disunity. It also referred to the Special Representative's publicly revealed concerns, i.e., about the expulsion of members from the National Assembly.

50. There was an earlier case involving an elected member of the National Assembly, but he never took office or was sworn in as a member, so that case was not a true case of expulsion of a sitting member. Although it is also true, as claimed, that the issue is one of internal politics of Cambodia, it is also one raising the fidelity of Cambodia to its own Constitution and laws protective of human rights and to the international human rights treaties which Cambodia has subscribed, as well as to the Paris Agreements. 5/

51. Annex 5 of the Paris Agreements includes a commitment of Cambodia "to follow a system of liberal democracy on the basis of pluralism". This is enshrined in the Constitution of Cambodia, article 50. Such a commitment was repeated in June 1995, before the vote to exclude Mr. Sam Rainsy, by the President of the National Assembly, Mr. Chea Sim. Other societies have successfully organized their political life on different bases. However, the Constitution and laws of Cambodia reflect faithfully the above commitment contained in the Paris Agreements. Because the Constitutional Council has not been established, any member purportedly expelled from the National Assembly upon loss of party membership, could not seek an authoritative ruling on the constitutionality of such a move. The Phnom Penh Municipal Court dismissed as beyond its jurisdiction the legal challenge to the expulsion from the party by

the expelled member. During his mission to Cambodia the Special Representative continued to press, as he has in the past, for the earliest possible establishment of the Constitutional Council.

52. The Special Representative's concerns about the expulsion and threatened expulsions of members of the National Assembly of Cambodia are entirely unconnected with the personalities of the particular members of the National Assembly involved or their respective political policies. The concerns of the Special Representative relate to the precedent which has been set; the fear that it will effectively transfer political power from the people at public elections to private meetings of political parties; the danger that fear of expulsion by the party will discourage dissent or serious debate on important issues in the Assembly (including those relating to human rights); and the condonation by the legislature of Cambodia of an apparently serious departure from constitutional legality, essential to the rule of law.

K. Vulnerable groups, including women, children and minorities

53. The Special Representative welcomes the continued discussion between the Governments of Cambodia and Viet Nam of the bilateral issues affecting both countries, including the issue of the rights of the minority ethnic Vietnamese population in Cambodia. He is still awaiting the enactment of a nationality law and subordinate legislation for refugees, which would be in conformity with the Constitution and relevant United Nations conventions to which Cambodia is a party. Shortly before the arrival of the Special Representative in Cambodia for his sixth mission, it was announced that 13 families of the approximately 90 ethnic Vietnamese boat people at Chrey Thom had been allowed to return to their homes in Cambodia upon establishing, through their family papers, a substantial period of residence in Cambodia. The Special Representative, who has made several representations about the issue and visited the floating encampment of Chrey Thom twice during earlier visits, welcomes this development. The majority of the people at Chrey Thom, estimated at 2,500, still await relief from their predicament. The Special Representative continues to monitor developments closely in this sensitive area.

54. In his meeting with the Co-Minister of Interior, Mr. Sar Kheng, the Special Representative raised concerns about certain directives which have delegated power to provincial and municipal authorities to register, detain and expel "illegal aliens" without taking into account procedures and safeguards as stipulated in the Immigration Law. The lack of a nationality law renders it impossible to determine legally who is an illegal alien. The Special Representative has been promised by Mr. Sar Kheng that these directives would not be implemented, which would result in the mass detention and collective expulsion of "illegal aliens", which, in turn, would be contrary to the International Covenant on Civil and Political Rights.

55. During the sixth mission, the Special Representative concentrated his attention upon the rights and needs of children. According to UNICEF, of the Cambodian population of approximately 9.7 million, 4.5 million are under 16 years of age. Approximately 1.5 million are under the age of 5. The Special Representative pays tribute to the Ministry of Social Affairs, Labour and

Veterans Affairs, Cambodian NGOs, UNICEF and other international and local agencies and NGOs for their work for the improvement and defence of the rights of Cambodia's children. According to UNICEF figures, Cambodia's infant mortality rate is the highest in South-east Asia. Article 48 of the Constitution provides that the State shall protect the rights of children as stipulated in the Convention on the Rights of the Child. Cambodia ratified that Convention on 15 October 1992. Translating these aspirations into practice is the challenge before Cambodia.

56. The Special Representative visited orphanages in Kampot and Phnom Penh. He met Government ministers and officials, representatives of NGOs and others concerned in children's projects. He met street children and had many opportunities to speak to Cambodian children as well as those concerned about their welfare.

57. The chief concerns which engaged the attention of the Special Representative with regard to vulnerable groups during the sixth mission were:

(a) Orphans. There are 29 Government orphanages in Cambodia and numerous private institutions operating under Government supervision. Problems arise when occupants in the orphanages reach 18 years of age. Funds are not available for the separate care of adults. The Ministry of Social Affairs, Labour and Veterans Affairs is currently planning to draft an adoption law in consultation with the Centre for Human Rights. At present, adoption, including adoption by foreigners, is arranged administratively, without the detailed requirements which typify the procedure in other countries;

(b) Education. Although the Constitution in its article 68 commits Cambodia to free primary and secondary education for all children, the education budget is low (see para. 18 above). Educational attendance in provincial districts is much lower than in urban areas. There continue to be high drop-out rates. There is a clear need for attention to the special education needs of females, handicapped children and children from minority ethnic communities. Many commentators stressed the need to improve the salaries of teachers;

(c) Sexual exploitation and trafficking. This topic has been referred to in earlier reports of the Special Representative. Although in 1990 the number of commercial sex workers in Phnom Penh was estimated at 1,500, the number increased rapidly during the UNTAC-supervised transitional period, which allowed an opening of the country after almost a decade and a half of international isolation. The Cambodian Women's Development Association now estimates that that number has increased to 17,000, of whom about 35 per cent are girls aged between 12 and 17. There is no legally specified age of consent for sexual intercourse provided by criminal law; however, it is generally taken to be 18 years. The Special Representative received reports of kidnapping and trafficking in virgin children and of girls of 12 years and younger being sold into prostitution by poor families in provincial districts. The spread of HIV/AIDS renders these developments especially worrying;

(d) Juvenile justice. The Special Representative welcomes the Government's acknowledgement of the need for a special policy on juvenile justice and the establishment of a Youth Rehabilitation Centre to avoid the

commitment of young offenders to Cambodia's unsatisfactory prisons. In Kampong Cham prison the Special Representative spoke to a prisoner who gave his age as 15 but who prison officers said was 17 years old and who complained of untreated syphilis. The Youth Rehabilitation Centre requires the development of guidelines for its operation to be worked out in consultation with the Centre for Human Rights and relevant NGOs. Complaints were received by the Special Representative about the lack of specialized juvenile judges, the frequent lack of legal representation for juveniles and the need for research on the causes of juvenile crime and the best ways of addressing those causes in the light of experience, particularly in the operation of the Youth Rehabilitation Centre.

L. Reporting obligations under international covenants

58. The Special Representative welcomes the cooperation of the Government with the relevant NGO communities in the drafting of Cambodia's report on the Convention of the Rights of the Child. The same cooperation is encouraged in the case of the proposed reports on the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. However, these reports are all overdue (see A/50/681/Add.1, paras. 81-85 and annex III, A). During his sixth mission the Special Representative conveyed to the Minister of Justice, as Chairman of the Inter-Ministerial Committee, the importance which he attached to the early submission of Cambodia's reports and to continued close consultation with interested bodies in their finalization. He extended his offer of technical assistance by the Cambodian office to the Council of Ministers in the finalization of these reports.

M. Security issues

59. During his visit, the Special Representative received information concerning the continuing laying of fresh anti-personnel land-mines by the Khmer Rouge in Siem Reap Province. Mines are used as a tactic to disrupt communication lines and to deny ground to government forces. They are not laid in fields or in any pattern which make them extremely difficult to clear, and they target civilians as well as the military. The Special Representative welcomes reports that in Siem Reap government forces appear to be adhering to the official policy of not laying new mines, even to protect positions at night.

60. The Special Representative welcomes the continued attention to the problem of land mines in Cambodia. The Minister of Information, Mr. Ieng Mouly, who is also the Chairman of the Cambodia Mine Action Centre, informed the Special Representative about proposed initiatives to increase the Government's response to the land-mine problem. The United Nations Development Programme (UNDP) has offered increased assistance to the Government beginning in 1996. Discussion is progressing within the Government concerning the development of a law on land-mines that will ban their import, use, production and stockpiling in Cambodia (see A/50/681/Add.1, para. 52). The Minister promised to consider, within available funds, measures for the compensation of victims. At the International Conference to Ban Land-mines held at Phnom Penh from 2 to 4 June 1995, the Secretary-General's representative in Cambodia, Mr. Benny Widyono, read the

Secretary-General's speech, entitled "The socio-economic impact of land-mines: towards an international ban". The Special Representative profoundly hopes that the Review Conference of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1990 (Protocol II of which deals with land-mines) will achieve real progress towards the goal advocated by the Secretary-General.

61. The Special Representative notes with concern a death threat received by the representative of the Secretary-General in Cambodia on 2 June 1995. The threat was delivered orally and in writing to the staff in the office of the representative in his absence. The description of the person involved was conveyed to the Government of Cambodia, which responded quickly and appropriately. A suspect was arrested on 26 June 1995. It would be intolerable if the representative could not perform his duties without threat or intimidation. The Special Representative expresses his satisfaction and thanks for the prompt reaction of the Government of Cambodia and the relevant United Nations agencies.

62. The above threat to the Secretary-General's representative must be seen in the context of other recent, and so far unresolved, attacks on United Nations personnel in Cambodia. These have included:

(a) The armed abduction and apparently deliberate shooting in the thigh on 8 September 1994 of Monica Oliveros, the 5-year-old daughter of Mr. Luis Oliveros, an officer of the Centre for Human Rights. This occasioned the emergency evacuation of that officer and his family from Cambodia. Despite some leads to identify the culprits, no one has yet been brought to justice as a result of this attack;

(b) The murder on 29 June 1995 of Ms. Mouninith Goossens, the spouse of a WFP staff member in Siem Reap. Although two suspects were arrested, they implicated a third person, who has not been apprehended as of this writing. Representations by United Nations officers, including the representative of the Secretary-General in Cambodia, were made to the Government;

(c) On 7 July 1995, in Kampong Thom, in a matter having to do with rice distribution, an officer of WFP was also threatened with murder by an officer of the Provincial Red Cross (PRC). The PRC officer was ordered transferred to another town by PRC. Subsequently the premises WFP and PRC shared in common were sprayed with bullets. Although nobody was physically injured, no one has yet been charged as a result of this action, which was plainly intended to intimidate those concerned.

63. The Special Representative brought his concerns about the threats to United Nations personnel, including all of the above, to the notice of the Minister of Interior, Mr. Sar Keng, when he met with the Minister during the sixth mission. A clear government response to, and action upon, these complaints will allow United Nations officers and their families to feel safe and to perform their duties in Cambodia in a normal manner.

64. A derivative problem, called to the attention of the Special Representative in every part of Cambodia which he has visited, is the extent to which firearms are readily available to the population. In part, this is the consequence of decades of war and revolution. It persists, partially, because of the continuing security challenge, but also because of the unregulated and unsanctioned abuse of their firearms by military and police personnel, often resulting in deaths and injuries of civilians. In Kampot, the Special Representative attended a mourning ceremony at which a mother grieved for her son, himself a soldier, allegedly killed for no apparent reason by a fellow soldier at a roadblock. Until the number of available firearms is radically reduced in Cambodia, real power will continue to be attached to guns, and many mothers, and others, will grieve.

VI. RECOMMENDATIONS

A. Right to health

65. The highest priority should be given to the increase by the Government of the budget of the Ministry of Health, as well as to campaigns directed at preventing the transmission of the human immunodeficiency virus (HIV), which causes AIDS. The Special Representative welcomes the agreement of the First Prime Minister to accept the position of the Honorary Chairman of the Inter-Ministerial Committee for AIDS/STD Prevention and Control. There is a need for wholehearted and active support of the national AIDS programme, in consultation with the World Health Organization (WHO) and other agencies. The Special Representative particularly recommends the following priority areas:

(a) The highest priority should be given to the increase by the Government of the budget of the Ministry of Health;

(b) In the prevention campaign against the spread of the HIV/AIDS virus, interventions should be made to involve and train commercial sex workers in safer sexual practices;

(c) The services to treat sexually transmitted diseases should be increased;

(d) General public awareness should be promoted;

(e) The draft law on the kidnapping, trafficking and exploitation of persons should be reviewed in close consultation with the Inter-Ministerial Committee for AIDS/STD, WHO, the Centre for Human Rights, and other relevant United Nations agencies;

(f) Appropriate public posters and advertisements should be restored, so as to bring AIDS awareness to the attention of the general population and to increase the availability and use of condoms.

B. Right to education

66. The Special Representative recommends that the highest priority be given to the increase by the Government of the budget of the Ministry of Education.

C. Right to housing

67. The Special Representative recommends that the following steps be taken to improve the handling of the problems of squatters, in order to ensure respect for their basic human rights:

(a) The City of Phnom Penh and other relevant municipalities should develop and publish an urban plan clarifying proposed land use in areas currently used by squatters;

(b) The squatters' representatives and communities should be consulted in respect of the orderly resumption of areas of land occupied by squatters;

(c) Land laws should be enforced in respect of the rights of persons who have continuously occupied land peacefully for many years;

(d) Before any eviction is attempted, due notice should be given to the squatters to permit peaceful removal of their property, discussion about compensation and the provision of suitable alternative housing sites;

(e) Court orders should be required before any forcible, contested eviction is attempted;

(f) Strict discipline by police, military and city officers should be observed in the conduct of the eviction of squatters;

(g) Education for children in squatter communities should be organized and provided.

D. Right to a healthy environment

68. The Government should continue to enforce the prohibition of logging of timber without reforestation and the ban on exports of such timber. In consultation with neighbouring countries, the Government should move resolutely to tighten the controls on the illegal export of timber from Cambodian territory.

E. New laws and practices

69. The Centre for Human Rights should continue vigilantly to monitor draft laws and to provide technical advice to the Government on the conformity of such laws with Cambodia's international human rights obligations. The Centre for Human Rights should alert the Special Representative concerning any draft laws which might raise serious human rights concerns so that he can consider making

representations to the Government in the form of a Human Rights Recommendation. In particular, the following proposals or draft laws should be reviewed: (a) draft law on labour; (b) draft law on kidnapping, trafficking and exploitation of persons; (c) draft law on pharmaceuticals; (d) draft law on association; (e) draft law on nationality and refugees; (f) draft law on land-mines; (g) the decree arising out of the Press Law; and (h) the decree arising out of the Immigration Law.

70. The Centre for Human Rights, in consultation with the Ministry of Justice, should offer an amendment to article 51 of the Law Regulating the Civil Servants to remove the effective impunity granted to members of the civil service against prosecution for certain criminal offences without the approval of a superior. The article should either be repealed altogether by the National Assembly or its operation confined to circumstances not inconsistent with equality before the law.

71. The Government of Cambodia should introduce improved administrative arrangements for cooperation between officials in different provinces to secure the extradition (return) of persons accused or suspected of a criminal offence, upon receipt of a warrant of request by a court or prosecutor in another province. Consideration should be given to the introduction of an enforceable summons for the attendance at legal proceedings of a witness. The effective prosecution of criminal process in particular should not be dependent upon the capacity of the court or prosecutor, or the ability of the family of a victim, to pay the necessary funds for the accused, or a vital witness, to be brought to court in a serious criminal case. The Centre for Human Rights should offer its technical assistance to the Ministry of Justice in proposing a draft of such a law.

F. Independence of the judiciary

72. The Special Representative commends the steps being introduced for the improved training of judges. In addition to those being pursued by the Ministry of Justice, these include:

(a) The Judicial Mentors Programme, being introduced by the Centre for Human Rights in consultation with the Ministry (see A/50/681/Add.1, para. 62);

(b) Lectures on relevant international human rights conventions and provision by the Centre for Human Rights of translations of those instruments into the Khmer language;

(c) The technical advice being given to Cambodian judges, prosecutors and court officials by judges and lawyers sponsored by the International Human Rights Law Group and provided by donor countries, including Malaysia. The effectiveness of these programmes should be monitored by the Centre for Human Rights in close consultation with the Ministry of Justice and the judges, prosecutors and court officials concerned.

73. The Government of Cambodia should explore the possibility of paying the judges and prosecutors of Cambodia a minimum salary which will ensure that those

with the will to be, and remain, scrupulously honest and uncorrupted can do so. A salary of the equivalent of US$ 400 per month for Cambodia's 135 judges has been proposed. The Government should explore the possibility of subventions from the World Bank or other appropriate bodies to permit the supplementation of judicial salaries to ensure judicial independence and the rule of law.

74. In the event that the foregoing is not accepted, the Special Representative recommends that the members of the Constitutional Council, when appointed, the Supreme Court and the Court of Appeal should receive the same salary at least as a member of the National Assembly. The judiciary is the third branch of the Cambodian Government. The Constitutional Council, when established, should enjoy a status, and an opportunity for the independence and integrity of its members, no less than that enjoyed by the members of the National Assembly.

G. Prisons and other custodial institutions

75. Urgent attention should continue to be given to the state of Cambodia's prisons (see A/50/681/Add.1, paras. 40-43). The defects in the condition and facilities of the prisons at Kampot and Kampong Cham, disclosed in the present report, should be addressed. The Cambodian office should continue (see A/50/681/Add.1, paras. 57-61), in dialogue with the ministries concerned, to explore the possibility of international donations to remedy the most glaring deficiencies in the current prison system and to develop new and modern prison facilities with conditions of security, cleanliness and humanity more closely approximating the prisons in other countries of the region.

76. The Ministries of Justice and Interior should take steps to enforce the minimum daily time for release from confinement in cells and to sanction the failure or refusal of prison guards to comply. Administrative discretion should be given to prison commanders, in exceptional circumstances, to vary the actual hours of release from cells, provided a specified minimum is allowed, by roster in the absence of any other alternative, to each prisoner. Facilities for sport and exercise should be required in every prison. Access to human rights NGOs and Defenders should be provided without hindrance, provided proper notice and proof of identity is given. The use of dark cells, shackles and leg irons and collective punishments in prison should be absolutely forbidden and punished where it is proved that they have occurred.

H. Press Law and freedom of expression

77. The Special Representative notes that a second journalists' organization, the League of Cambodian Journalists, has been established in addition to the Khmer Journalists' Association. The Centre for Human Rights should continue to work with the Khmer Journalists' Association and with the Cambodian Communication Institute and UNESCO and offer assistance to the League of Cambodian Journalists, concerning the improvement of standards and the safeguarding of the independence of the media and of journalists' organizations in Cambodia.

78. The Centre for Human Rights should keep the concerns expressed by the Special Representative in relation to the Press Law under review as that law is brought into operation. In particular, if subordinate legislation is introduced to define terms such as "national security" and "political stability" in the law, the Centre for Human Rights should offer its assistance in a way that will help to maximize the protection of freedom of expression in Cambodia.

I. Right to be elected and to take part in government

79. In the absence of necessary constitutional and legal amendments clearly authorizing such a course, the expulsion of members of the National Assembly, upon their removal of political parties in whose interest they were elected should cease.

80. Stimulated by the legal controversy following the expulsion of a member from the National Assembly and the threatened expulsion of more members and the urgent desirability of having an institution that provides authoritative constitutional decisions in such cases, the Constitutional Council should be established without further delay.

J. Vulnerable groups

81. The directives issued by the Ministry of Interior calling for the holding in "immigration centres" and the immediate expulsion of illegal aliens without due process of law should be rescinded in writing. A nationality law with a full definition of a Cambodian citizenship and consistent with the Constitution and Cambodia's international obligations should be enacted as soon as possible. No mass detention or collective expulsion of suspected illegal aliens should occur. Directives should be issued confirming that each person's individual case will be individually considered and determined on its own merits.

82. The Government should consider taking the following steps in furtherance of the human rights of children in Cambodia:

(a) Laws relating to children should be reviewed to ensure their compliance with the Convention on the Rights of the Child;

(b) The proposed Cambodian National Children's Council should assume the responsibility of monitoring the implementation in Cambodian law and practice of the requirements of the Convention of the Rights of the Child. It would be highly desirable for the Council to include three NGO representatives, as proposed in the sub-decree submitted to the Council of Ministers;

(c) A high-level meeting attended by representatives of the World Bank, UNICEF and international donor organizations should be summoned to consider the provision to Cambodia of the special economic assistance necessary for an effective attack on the impediments to the attainment of full human rights for children in Cambodia;

(d) Judges, police, teachers and other relevant governmental personnel should be given training in the requirements of the Convention on the Rights of the Child;

(e) Special attention should be given, in the development of policies for children, to the needs of ethnic minorities, rural children, orphans and handicapped children;

(f) In the area of juvenile justice, the Centre for Human Rights should assist the Government in ensuring that any new legislative or administrative practices are consistent with the Convention on the Rights of the Child and other relevant international guidelines in particular, the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. The age of criminal responsibility should be established by law. Judges should be specially trained to handle juvenile cases. Education should be provided to juveniles in detention. The guidelines for the operation of the Youth Rehabilitation Centre should be prepared in consultation with the Centre for Human Rights and the relevant NGOs;

(g) Trafficking in or kidnapping of children, the sale of underage children into prostitution and sexual exploitation of minors under the legal age of consent should be punishable criminal offences. A task force to monitor the foregoing problems should be established to include the relevant NGOs, with the power to carry out advocacy for the protection of children and to prepare legal and administrative policies and reforms. The Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography should be engaged in helping to tackle the growing problems of child sexual exploitation in Cambodia. The proposed draft law on the kidnapping, trafficking and exploitation of persons should deal specifically with the sexual exploitation of children.

K. Reporting obligations

83. Cambodia should fulfil, without further delay, its reporting obligations under the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination and other conventions with reporting obligations. The Centre for Human Rights should, as requested, further assist the Ministry of Justice, the Inter-Ministerial Committee and the Council of Ministers in order to secure the earliest possible completion of the reports (see A/50/681/Add.1, paras. 81-85). The attention of the Cambodian Government has been specifically drawn to the necessity to finalize the report by the Cambodian Government to the Committee on the Elimination of Racial Discrimination before 31 December 1995.

L. Security issues

84. The Centre for Human Rights should provide assistance, as required, and closely monitor the introduction of a law to prohibit the use of land-mines in Cambodia. The office of the Centre should give consideration to ways in which

the special concerns of Cambodia can be placed effectively before the Treaty Review Conference in Vienna in September 1995.

85. The Government of Cambodia should institute a project aimed towards a national plan for the recovery of firearms from the population. Such a policy is necessary to reduce the incidence of violence involving the use of guns, which continue to plague Cambodian society. Any such firearm retrieval policy would need to utilize techniques of inducement (amnesty, reward and destruction) as well as an effective policy of punishment for illegal possession of firearms after the expiry of an amnesty. The Special Representative recommends that the Government of Cambodia consult with other countries, including those of the Association of South-East Asian Nations (ASEAN), which may have relevant experience in the reduction of the prevalence of firearms. They might offer Cambodia the benefit of their experience. It is recommended that Cambodia set this project in motion so that it can be introduced and enforced as soon as the security situation permits.

86. In the meanwhile, strict regulations relating to the use of their firearms by law-enforcement personnel (the police, the military, the militia) should be adopted and effective enforceable mechanisms should be devised to ensure the effective compliance with these regulations, including by the use of sanctions. An effective implementation of such measures would greatly contribute to curbing the number of human rights violations, including killings and injuries, caused by abusive use by security personnel of their firearms.

87. The Government should make it plain that the attacks on United Nations personnel are condemned. It should ensure that all such attacks are investigated promptly and followed up vigorously and that those shown to be responsible are rendered accountable to the law. If the Government firmly addresses this issue, the image and reputation of Cambodia, particularly among United Nations and other international organizations, would be further reinforced. A lack of resolute action by the Government in such cases may be misunderstood as an official tolerance of these practices and as an encouragement to further violence against United Nations and other personnel working in Cambodia by elements bent on violence.

M. Ongoing technical advice and assistance

88. The Special Representative once again expresses his commendation to the office of the Centre for Human Rights in Cambodia and its staff, including the United Nations Volunteers (UNVs), consultants and judicial mentors, for their dedicated work during the period under review. He also pays tribute to the Cambodian and international human rights and other NGOs as well as to other United Nations agencies, funds and programmes, notably UNDP, UNV and the Office of the United Nations High Commissioner for Refugees (UNHCR).

89. He recommends more regular consultations between concerned ministries, such as the Ministries of Justice, Interior and Defence, and Cambodian human rights NGOs. In particular, the Special Representative invites the Government to consider the establishment of a regular consultative mechanism, possibly a monthly or bi-monthly meeting between representatives of concerned ministries

and Cambodian human rights and other NGOs. Such a mechanism would allow each party to understand the work, point of view and concerns of the others, in an atmosphere of fruitful exchange and dialogue. This would also help defuse potential tensions which can sometimes arise from misunderstandings and lack of communication.

90. The Special Representative makes the following administrative suggestions:

(a) There remains an urgent need to reduce the delays in the provision of financial and personnel decisions to the Cambodia office from the Centre's headquarters in Geneva. The creative administrative steps, urged in previous reports, have still not been taken to ensure an appropriate measure of autonomy of action, budgetary delegation and avoidance of delays in the filling of vacant positions;

(b) In preparation for future missions of the Special Representative, a pamphlet in the Khmer language should be prepared describing the mandate of the Special Representative, the programme of technical cooperation of the Centre in Cambodia and the activities of each to date. This would be of particular help in the provinces where the work of the Centre is less well known than in Phnom Penh;

(c) Particular tribute is paid to the UNVs and human rights assistants posted at provincial offices in Siem Reap, Battambang and Kampong Cham. The provincial offices have extended the effectiveness of the work of the Centre (see A/50/681/Add.1, paras. 109-112). They have also greatly enhanced the work of the Special Representative. Combined with the Judicial Mentors Programme and appropriate liaison with government agencies, other United Nations agencies, funds and programmes (ibid., paras. 118-134) and NGOs, these will enlarge the outreach of the work of the United Nations for human rights in Cambodia, which remains a most worthy undertaking.

Notes

1/ E/CN.4/1994/73 and Add.1.

2/ E/CN.4/1995/87 and Add.1.

3/ E/CN.4/1994/73 and Add.1.

4/ See General Assembly resolution 2200 (XXI), annex.

5/ A/46/61-S/22059.

ANNEX I

Programme of the sixth mission of the Special Representative of the Secretary-General for human rights in Cambodia, 5-16 August 1995

5 August

Arrival at airport

Working meeting with the staff of the Centre for Human Rights

Dinner with the Secretary-General's representative in Cambodia, Mr. Benny Widyono

6-8 August: Field visit to Kampot Province

6 August

Departure to Kampot Province

Meeting with local human rights NGOs

Visit of Kampot provincial prison

7 August

Visit of a traditional music school for orphaned and handicapped children

Departure to Kep Municipality

Speech delivered by the Special Representative at a human rights training seminar for police officers

Meeting with and briefing by the Governor of Kep

Visit to Chamkar Bei-Khmer Rouge defectors and their families resettlement zone in Kep

Meeting with United Cambodian Communities (UCC) trained community leaders

Dinner with the Provincial Governor

8 August

Meeting with the representatives in Kampot of the International Human Rights Law Group's court reform project

Meeting with Kampot Tribunal

Visit of several UCC development projects for vulnerable groups (widows, war invalids, children)

Meeting with the Director of the Central Justice Office of the Provincial Judiciary Police

Departure to Phnom Penh

9 August: Visit to Kampong Cham Province

Breakfast with Mr. Khieu Kannharit, Secretary of State for Information

Departure to Kampong Cham

Arrival in Kampong Cham provincial town

Meeting with local human rights NGOs

Lunch with United Nations and other aid agencies

Meeting with the provincial tribunal

Dinner with the provincial Deputy-Governor and his staff

10 August

Meeting with Mr. Hun Neng, Provincial Governor

Visit of the provincial prison

Departure to Phnom Penh

Meeting with Mr. Pin Sam Khon, President of the Khmer Journalists Association

Meeting with Mr. Chhum Kanal, President of the League of Cambodian Journalists

Meeting with Mr. Son Soubert, Second Vice-President of the National Assembly

11 August

Breakfast with Mr. Gildas Le Lidec, Ambassador of France, and Mr. G. Porcell, responsible for French technical and cultural cooperation with Cambodia

Meeting with Mr. Loy Sim Chheang, First Vice Chairman of the National Assembly, and the heads of several National Assembly Commissions on the legal and technical aspects of the expulsion of MPs

Meeting with Mr. Ieng Mouly, Information Minister and President of the Mines Action Centre

Meeting with representatives of United Nations agencies, funds and programmes in Cambodia, ICRC and the European Union

Meeting with the diplomatic corps

Dinner with Prince Norodom Sirivuddh, Secretary-General of the FUNCINPEC party

12 August: Children's Rights Day

Visit of Kolap 1 Government orphanage

Meeting with Mr. Suy Sem, Secretary of State for Social Affairs, Labour and Veterans

Meeting with the Committee on the Convention on the Rights of the Child: briefings on child sexual exploitation and trafficking, education, juvenile justice

Lunch with Mr. Yim Po, President of the Cambodian Centre for the Protection of Children's Rights

Meeting with Mr. Chhim Siek Leng, Mayor of Phnom Penh, and his staff

13 August

Meeting with heads of Cambodian human rights NGOs

Lunch with ASEAN ambassadors, hosted by the Ambassador of Indonesia

Meeting with the Urban Sector Group

Field visit to squatter settlements in Phnom Penh

Dinner with the Ambassador of Malaysia, Mr. Deva Mohd Ridzam

Night visit of Phnom Penh street children with the NGO Little Friends

14-16 August: Meetings with senior Government figures

14 August

Report drafting: Mr. Kirby

Lunch with the Ambassador of Indonesia, Mr. Taufik Rachman Soedarbo

Report drafting

Meeting with the Minister of Justice, Mr. Chem Snguon

Report drafting: Mr. Kirby (continued)

15 August

Meeting with the Co-Minister of Interior, Mr. Sar Kheng

Report review with the staff of the Cambodia Office

Press conference at the Foreign Correspondents Club

16 August

Meeting with the President of the National Assembly and Chairman of the Cambodian People's Party, Mr. Chea Sim

Audience with His Majesty the King, Preah Bat Samdech Preah Norodom Sihanouk Varman

Departure to the airport

ANNEX II

Human rights recommendations 1994-1995 a/

[Original: English and French]

HR REC 17/94 b/ - August 1994: Continued illegal detention of nine suspects in connection with 2 July coup attempt. The Ministry of Foreign Affairs acknowledged receipt, informed the Special Representative that his recommendations had been transmitted to relevant authorities and that response by them would be forwarded. No response was received. The nine suspects were released.

HR REC 18/94 - August 1995: Ministry of Interior circulars relating to NGOs' freedom of association and of expression. A Ministry of Foreign Affairs reply dated 13 October 1994 assured the Special Representative of the commitment of the Government to respect freedom of association and expression as guaranteed by the Constitution. A telegram by the Ministry of Interior to provincial and municipal governors clarified the directives: new NGOs only are required to seek authorization from the Ministry of Interior to operate; NGOs are not requested to provide reports on their activities and on the composition and number of their staff; and no authorization is required to organize meetings or training sessions but the authorities solely need be informed about them. A law on associations is currently being drafted by the Ministry of Interior.

HR REC 19/94 - 16 September 1994: Immigration Law. The Ministry of Foreign Affairs acknowledged receipt and assured the Special Representative that the law would be implemented in full respect of the Cambodian Constitution and international human rights conventions acceded to by Cambodia. Several recommendations, including one on increased cooperation with the office in Cambodia of the Centre for Human Rights, were considered and accepted by the Ministry of Interior. A consultant provided by the Centre for Human Rights is currently working with the Ministry of Interior to assist in drafting subordinate legislation.

HR REC 20/94 - 29 September 1994: Attack on Centre's staff member Luis Oliveros and his five-year-old daughter Monica. The then Minister for Foreign Affairs alerted the National Police and himself took an active part in the search and rescue of Monica Oliveros after she was abducted by armed men. The Ministry of Foreign Affairs acknowledged receipt of the letter on 25 October 1994 and condemned the attack. It assured the Special Representative of prompt action against the perpetrators, if found. Similar letters of condemnation by His Majesty the King and the First Prime Minister were addressed to the Special Representative. The perpetrators, alleged to be military personnel, were identified by the police. However, no known action against them has so far taken place. There is no indication that the police are seriously pursuing their investigation. The matter was again raised by the Special Representative during his sixth mission with the Minister for Foreign Affairs and the Minister of Interior.

HR REC 21/94 - 16 September 1994: Assassination of journalist Noun Chan; deterioration of situation of press freedom. The Ministry of Foreign Affairs responded on 25 October 1995, condemning the assassination and informing the Special Representative that an investigation had been ordered into the murder (see main document, para. 46). The letter by the Ministry of Foreign Affairs condemned what it regarded as "abuse of press freedom" by journalists in the form of "public insults, slanders, use of filthy language and publication of pornographic materials". It stated that Cambodian public opinion felt that "there is too much freedom of the press in Cambodia, to the point of becoming an anarchy in which freedom will suffer and perish".

HR REC 22/94 - 27 October 1994: [Second letter about] attack against United Nations Centre staff member and his five-year-old daughter Monica. [Action taken; see above]

HR REC 23/94 - 26 September 1994: Warnings to human rights NGOs (in connection with the murder of Noun Chan). No formal response. No action was taken against the concerned NGOs. In a public statement dated 29 September 1994, the First Prime Minister said the Cambodia office of the Centre for Human Rights was "more concerned with its investigation into a case that is already two years old c/ than with the most unwarranted and dubious accusations emanating from [human rights] organizations whose mission is precisely to ensure respect for the basic rights of citizens. It is unfortunate [...]"

HR REC 24/94 - 18 November 1995: Draft press law. The Ministry of Foreign Affairs acknowledged receipt and informed the Special Representative that his recommendations had been shared with concerned authorities and that it would forward any response by them. Several recommendations were incorporated in the draft by the Ministry of Information. No other formal response was received.

HR REC 25/94 - 28 November 1994: Freedom of expression: Two cases (closure of the newspaper Odom Kete Khmer; suppression of the TV programme "The public opinion". The Ministry of Foreign Affairs acknowledged receipt on 12 December and informed the Special Representative that his letter had been passed on to relevant authorities and that it would forward any response by them. No known action was taken. No formal response was received. Odom Kete was allowed to reopen a week before the fifth mission to Cambodia of the Special Representative. However, it was shut down again soon afterwards. The newspaper recently resumed publication pending an appeal against a conviction. It is subject to new court proceedings.

HR REC 26/94 - 27 December 1994: Killing of journalist Sao Chan Dara - Threat of violence to the newspaper Preap Norm Sar; letter of the Ministry of Information dated 16 December 1994 concerning the publication of "obscene" stories. No formal response was received. A suspect, army Col. Sat Soeun, was arrested upon action by the Ministry of Interior and detained in connection with the murder of the journalist. He was tried in June 1995. He was acquitted of the charges in a trial before Kampong Cham provincial court. No further action was taken. There is no indication that the murder continues to be investigated.

HR REC 1/95 - 30 January 1995: Alleged threats against certain members of the National Assembly. No acknowledgement of receipt. No formal response. The

Second Prime Minister, Mr. Hun Sen, declined to comment during a meeting on 25 January at which the Special Representative raised the matter. The Government made a statement before the United Nations Commission on Human Rights in February 1995 stating that: "With regard to threats against members of the National Assembly, no such threat exists [...] However, there are certainly one or two members of the Assembly who insult the Government and the army and, out of fear, tell everyone that they have been threatened."

HR REC 2/95 - 2 February 1995: Draft press law. No acknowledgement of receipt. No formal response. The main recommendations were not included in the draft before it was enacted by the National Assembly.

HR REC 3/95 - 13 April 1995: Protection for freedom of expression and opinion of journalists. The Ministry of Foreign Affairs acknowledged receipt on 2 May 1995. It stated that the recommendation had been passed on to relevant authorities and that any response by them would be forwarded to the Special Representative. No further response. No known follow-up.

HR REC 4/95 - 13 April 1995. Reported killing of Vietnamese civilians; lack of prosecution of perpetrators. The letter drew the Government's attention to a killing allegedly perpetrated by non-Khmer Rouge elements, as appeared to be the case in at least three reported incidents in 1994. The Ministry of Foreign Affairs acknowledged receipt on 2 May. It stated that the recommendation was being shared with relevant authorities and that it would inform the Special Representative of any follow-up. No response. No follow-up. No known action.

HR REC 5/95 - 22 May 1995: Proposed law for the regulation of the legal profession. No acknowledgement of receipt. No formal response. The Special Representative's main recommendation that the profession of human rights Defender be formally recognized was incorporated in the draft law adopted by the National Assembly, although for a maximum duration of two years.

HR REC 6/95 - 30 May 1995: Status of members of the National Assembly. In a reply addressed in his capacity as President of the FUNCINPEC party, Prince Norodom Ranariddh, the First Prime Minister, rejected the Special Representative's recommendations as unwarranted interference in the workings of Cambodia's sovereign National Assembly. The letter contrasted the position of the Special Representative, as stated in his recommendation (respect for freedom of expression of members of the National Assembly, for the Constitution, the Electoral Law and the internal rules of the National Assembly) with that attributed to the Secretary-General, as had been made public by the Secretary-General's representative in Cambodia (non-interference in domestic matters). The member of the Assembly was expelled from the Assembly on 22 June 1995.

HR REC 7/95 - 16 June 1995: Draft press law. No acknowledgement of receipt. No formal response. No known action (see above).

HR REC 8/95 - 26 July 1995: Alleged attacks on guards of former Minister. The First Prime Minister replied on 12 August that the Special Representative's recommendations have been passed on to "competent military authorities for investigation and report" and that he would be informed of any development about

the matter. No known action as of the date of preparation of the present report.

HR REC 9/95 - 15 August 1995: Arrest of balloon flyers distributing pamphlets. The Minister for Foreign Affairs, Mr. Ung Huot, acknowledged receipt of the letter at a meeting with the Special Representative on 16 August 1995 during his sixth mission to Cambodia. However, he did not comment on the substance of the matter as the case was being heard on the same day by the Phnom Penh Municipal Tribunal.

Notes

a/ For the previous human rights recommendations, see A/49/635, annex III.

b/ HR REC = human rights recommendation.

c/ I.e., the case of the secret military detention and execution site at Cheu Kmau.

ANNEX III

Letter dated 13 October 1995 from the Royal Government of Cambodia to the United Nations Centre for Human Rights

I apologize for the delay in our comments on Mr. Michael Kirby's draft report on the human rights situation in the Kingdom of Cambodia to be submitted to the General Assembly, owing to the fact that we received it quite late.

My Government has taken careful note of all points and recommendations made by the Special Representative for the implementation and promotion of human rights in Cambodia. As we shared most of his remarks and recommendations, we also wish to bring to his attention the following observations which we hope will, to a large extent, help make this draft report even more balanced.

In fact, the information and clarifications provided by the Cambodian Government officials at both the central and local levels with Mr. Michael Kirby during his sixth mission to Cambodia hopefully would give him a better understanding and comprehensive picture of the human rights situation in Cambodia as well as the unchanging and firm commitment of the Royal Government of Cambodia to work for the protection and promotion of human rights. However, we still ascertained that this draft report, firstly, contained a number of allegations levelled against the Royal Government that were not only contradictory with the reality but also outdated. Secondly, some of the wordings used in the draft report were not appropriate and consistent with the political will and efforts made by the Royal Government in the implementation and improvement of the human rights situation. Thirdly, a number of criticisms against the Royal Government were unclear and non-specific. And finally, there were also a number of unsubstantiated assertions which appeared to be based only on rumour and hearsay.

- Paragraph 10: This paragraph should be written as follows:

"Unfortunately, it did not prove possible for the Co-Prime Ministers to receive the Special Representative due to the fact that the schedule of the First Prime Minister was so tight while the Second Prime Minister was absent from the country for health reasons. However, ... contemplated."

- Paragraph 11: This paragraph should be written as follows: "... If possible, technical assistance should be offered to the institution(s) to be set up by the Royal Government of Cambodia to assist in analysing the information on human rights in Cambodia". Institutions(s) here means the mechanism to be put in place by the Government.

- Paragraph 13: Owing to the lack of communication between the Royal Government and the Centre, there are some actions which have already been taken by the Government with regard to the recommendations made in earlier reports but which the Centre was not aware of. Therefore, this paragraph should read as follows:. "Due to the lack of communication between the Government and the Centre, it seems that some actions have already been taken by the Royal Government with regard to the recommendations made in earlier reports but the

Centre was not informed of. In other cases, implementation ... recommendations".

- Paragraph 13, subparagraph (e): It would be better if this subparagraph acknowledged the causes which hampered the Government in responding to the recommendations and reports of the Special Representative, rather than jumping to such a conclusion. Therefore, subparagraph (e) should read as follows: "The Special Representative hopes that, if material and financial resources are made available to the Government, the latter will be in a better position to timely respond to his recommendations and reports."

- Paragraph 16: For this paragraph, the word "harass" is not appropriate. We wish to change the word "harass" to "contain and control". In the same sentence, the report says: "to remove public posters promoting the use of condoms". We wish to explain to you that no instructions have been given by the Government to the local authorities to do so. Therefore, we wish to correct that phrase to read "the authority should ensure that these posters will not be removed".

- Paragraph 16, middle of paragraph: "The Special Representative ... was nearing completion". The Council of Ministers had approved such a draft law. It is currently under the National Assembly's Committee to review it. We have no authority to tell the National Assembly what to do. However, according to our experience, if the Committee disagreed, they would reject this draft and require us to amend it.

- Paragraph 16, end of paragraph: Regarding HIV/AIDS, we appreciated very much the comments made by the Special Representative to welcome a decision of Cambodian journalists to improve and increase media reportage of the issue of HIV/AIDS. During the meeting with the Director of the Centre for Human Rights Cambodia office, we also reported that efforts have been made by the Government to include advertisements on the radio, in local newspapers and local TV as well. This is a very intensive effort to increase the awareness of the population on the issue. Yet it is at the high level of the Royal Government of Cambodia's efforts to determine the fight against this communicable disease including the Committee which has been established and chaired by His Royal Highness the First Prime Minister. Therefore, we do not share the view of the report that the national campaign against HIV/AIDS has been set back, as has been reported by the Special Representative.

- Paragraph 18: The report has said that health-care service staff charge substantial sums for their services. The Ministry of Health has been instructed to conduct an investigation on the matter. The result of this investigation will be brought to your attention through the Centre for Human Rights Cambodia office.

- Paragraph 24: We request a correction on the settlement on the land continuously for more than five years, which gives entitlement to legal ownership of the land under the State of Cambodia land law, to reflect the exact wording of such law.

- Paragraph 30: We request inclusion of the latest efforts made by the Royal Government, on 30 April 1995, including the utilization of air force, to enforce the ban on log exports. And we believe this firm commitment of the Royal Government to protect our environment deserves to be complimented.

- Paragraph 32: The response to the concerns over the Press Law are included in the annexes made by the Ministry of Information.

- Paragraph 32: "... Law Regulating the Civil Servants, passed in October 1994, contains an article 51 that provides a measure of immunity from prosecution to all civil servants in certain cases". We wish to clarify this point as follows. Those who are caught red-handed will be prosecuted immediately. However, this law also states that those civil servants who are being accused will need to have the consent and the opinion of their supervisors.

- Paragraph 33: "... As originally proposed, this law would have inhibited or curtailed the work of the human rights Defenders who have been trained to represent accused persons in Cambodian courts." The current Cambodian law on the Bar Association has very strong requirements that the Defenders (lawyers) should meet very specific qualification in order to be able to represent the accused persons in Cambodian courts. Paraprofessionals do not have such qualifications.

- Paragraphs 37 and 49 (a): These two paragraphs related to the expulsion of a member of the National Assembly. The Special Representative also mentioned that he had had a meeting with the First Vice-Chairman of the National Assembly, H.E. Loy Sim Chheang, and the Chairmen and other members of the Commission of the National Assembly, on 11 August 1995. The Special Representative also admitted that the explanations made by those National Assembly officials were at a lengthy session (approximately four hours). We strongly believe that the Special Representative understood the situation perfectly. Unfortunately, the Special Representative seemed not to be satisfied and has still included this matter in his report.

Final comments: On the one hand, we appreciate very much the concerns expressed by the Special Representative on human rights in every field and domain. On the other hand, we still believe that this draft report should be written in a balanced manner in order to reflect the many efforts made by the Royal Government of Cambodia at a time when the latter is still facing human, material and financial constraints. Furthermore, reading this report leads us also to have the impression that the Special Representative is acting as an authoritative law-enforcement officer, that is to say, to watch us for the discrepancy area but not to provide enough technical assistance to help implement, protect and improve the human rights situation which has been so far much better.

I kindly request you to forward this letter to the Special Representative of the United Nations Secretary-General, Mr. Michael Kirby, and circulate it as an official document of the current fiftieth session of the United Nations General Assembly.

(Signed) Nady TAN